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HOUSE BILL 656

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Nathan P. Cote

AN ACT

RELATING TO FAMILY VIOLENCE; ENACTING THE CONFIDENTIAL ADDRESS PROGRAM ACT; PROVIDING FOR THE USE OF A SUBSTITUTE ADDRESS BY PROGRAM PARTICIPANTS; AMENDING, RECOMPILING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Confidential Address Program Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the Confidential Address Program Act:

A. "agency" means any department, institution, board, bureau, commission, district or committee of government of the state of New Mexico and every office or officer thereof;

B. "certification card" means a card issued by the

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1 secretary of state certifying that an individual is a
2 participant in the confidential address program;

3 C. "confidential address program" means the program
4 established pursuant to the Confidential Address Program Act
5 under the auspices of the office of the secretary of state
6 whereby participants in that program are entitled to use a
7 substitute address for all purposes;

8 D. "participant" means an individual who has
9 applied for and been accepted into the confidential address
10 program; and

11 E. "substitute address" means the address of the
12 secretary of state that may be used as a substitute for a
13 participant's residential, work and mailing addresses.

14 Section 3. Section 40-13-11 NMSA 1978 (being Laws 2007,
15 Chapter 131, Section 1) is recompiled as Section 3 of the
16 Confidential Address Program Act and is amended to read:

17 "~~[SUBSTITUTE ADDRESS]~~ CONFIDENTIAL ADDRESS PROGRAM--
18 ELIGIBILITY--RECORDS.--

19 A. A victim of domestic abuse, or the victim's
20 representative pursuant to Section 31-26-3 NMSA 1978, who has
21 good reason to believe that the victim's safety is at risk may
22 apply to the secretary of state for ~~[the use of the secretary~~
23 ~~of state as a substitute address]~~ participation in the
24 confidential address program. The application shall be on a
25 form provided by the secretary of state and shall include:

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1 (1) a statement that the secretary of state is
2 [~~acting~~] requested to act as an agent of the victim for
3 purposes of the forwarding of mail;

4 (2) a mailing address for forwarding received
5 mail and a telephone number where the victim can be contacted
6 by the secretary of state;

7 (3) payment of a seventy-five-dollar (\$75.00)
8 application fee, which may be waived if the applicant is
9 indigent; and

10 (4) the signature of the victim or the
11 victim's representative.

12 B. The secretary of state shall maintain a
13 confidential record of applications for [~~a substitute address~~]
14 participation in the confidential address program and forward
15 any mail received on behalf of a [~~victim of domestic abuse~~]
16 participant to the [~~new~~] mailing address provided on the
17 application.

18 C. It is unlawful for a person to knowingly attest
19 falsely or to knowingly provide incorrect information on an
20 application for participation in the confidential address
21 program.

22 D. The secretary of state may adopt rules to
23 implement the confidential address program."

24 Section 4. [NEW MATERIAL] CONFIDENTIAL ADDRESS PROGRAM
25 PARTICIPATION--RENEWAL--WITHDRAWAL--CANCELLATION OF

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1 PARTICIPATION.--

2 A. An individual's participation in the
3 confidential address program shall continue for a three-year
4 period unless the participant withdraws from the program at an
5 earlier date.

6 B. A participant may renew participation in the
7 confidential address program for a three-year period by filing
8 with the secretary of state a copy of the participant's current
9 certification card and properly completed renewal application.

10 C. A participant may withdraw from the confidential
11 address program by submitting to the secretary of state written
12 notice of withdrawal and the participant's current
13 certification card. The withdrawal will be effective upon the
14 receipt by the secretary of state of the notice of withdrawal
15 and current certification card.

16 D. The secretary of state shall cancel a
17 participant's participation in the confidential address program
18 if:

19 (1) the participant has been in the program
20 for three years and a renewal has not been requested;

21 (2) the participant knowingly provided false
22 or incorrect information when applying for participation;

23 (3) the participant obtains a name change and
24 does not notify the secretary of state within forty-eight hours
25 of the effective date of the name change;

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1 (4) the participant no longer resides at the
2 residential address listed on the program application and has
3 not provided seven days prior written notice of the change of
4 address; or

5 (5) mail forwarded to the participant is
6 returned to the secretary of state as being non-deliverable or
7 unclaimed.

8 E. The secretary of state shall attempt to send
9 written notification of the cancellation of a participant's
10 participation in the program to the participant at the
11 participant's last known residential and mailing addresses.

12 Section 5. [NEW MATERIAL] USE OF SUBSTITUTE ADDRESS.--

13 A. Upon demonstration of a participant's
14 participation in the confidential address program, an agency, a
15 state, a magistrate, a municipal or metropolitan court, a
16 county, a municipality or any other governmental entity shall
17 accept the secretary of state as the designated address of the
18 participant for purposes of providing a residential, work or
19 mailing address for the participant.

20 B. When creating state and local government records
21 or updating existing records, a participant shall show the
22 participant's certification card to the agency and request the
23 use of the substitute address in lieu of the participant's
24 actual residential, work and mailing address.

25 C. The agency employee assisting the program

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1 participant may make a file photocopy of the certification
2 card.

3 D. The agency shall accept the substitute address
4 unless the agency has received a written exemption pursuant to
5 Section 8 of the Confidential Address Program Act.

6 E. At the time of a participant's request to enroll
7 in a public school, the school may contact the secretary of
8 state to verify the enrollment eligibility of the participant.
9 Eligibility for the participant's enrollment shall be
10 determined using the current residential address shown in the
11 participant's records with the confidential address program.
12 All school correspondence mailed to the participant or the
13 participant's parents or guardians shall be sent to the
14 substitute address.

15 F. A participant in the confidential address
16 program who is otherwise qualified to vote may register to vote
17 through the county clerk in the participant's area. A
18 participant shall vote only by absentee ballot and shall
19 receive absentee ballots by mail through the secretary of state
20 for all local, state and national elections in which the
21 participant is eligible to vote. All voting and election
22 records of a participant shall be maintained in a manner
23 ensuring that those records are accessible only to selected
24 authorized personnel and that they shall not be publicly
25 accessible. A participant's residential address shall not be

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1 disclosed to any person for any purpose except by court order
2 and shall not appear on any public list or report produced by a
3 county clerk. The secretary of state shall notify the
4 appropriate county clerk when:

5 (1) a participant's program certification has
6 expired;

7 (2) a participant's program certification has
8 been withdrawn or canceled;

9 (3) a participant's absentee ballot is
10 returned as being nondeliverable; or

11 (4) a participant's residential address has
12 changed.

13 G. A participant shall be exempt from any
14 obligation to serve on a jury.

15 Section 6. [NEW MATERIAL] SERVICE OF PROCESS.--

16 A. The secretary of state is designated as agent
17 for service of process and receipt of mail for a participant.

18 B. Service of any summons, writ, notice, demand or
19 process upon a participant may be accomplished by mailing to
20 the secretary of state or by delivering in person to the office
21 of the secretary of state.

22 C. When a summons, writ, notice, demand or process
23 is served on the secretary of state, the secretary of state
24 shall immediately forward a copy to the participant by
25 first-class mail to the participant's mailing address shown in

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1 the participant's records with the confidential address
2 program. All time periods related to service of process are
3 extended by five business days for a participant.

4 D. The secretary of state shall maintain in a
5 participant's records with the confidential address program a
6 record of all summonses, writs, notices, demands and processes
7 served upon the secretary of state for that participant, which
8 record shall include the date of such service and the action
9 taken by the secretary of state.

10 Section 7. [NEW MATERIAL] EXEMPTION FROM USE OF A
11 SUBSTITUTE ADDRESS.--

12 A. An agency may request an exemption from the
13 requirement of the Confidential Address Program Act to use a
14 participant's substitute address. If requesting an exemption,
15 an agency shall provide in writing to the secretary of state
16 the following:

17 (1) identification of the statute or
18 administrative rule which demonstrates the agency's bona fide
19 need for the use of the actual residential, work or mailing
20 address of a participant;

21 (2) identification and description of the
22 specific purpose for which the exemption is requested;

23 (3) identification of the individuals by title
24 or job function within the agency who will have access to the
25 actual residential, work or mailing address of a participant;

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1 (4) an explanation of how the use of the
2 substitute address will prevent the agency from meeting its
3 obligations pursuant to the statute or rule; and

4 (5) an explanation of why the agency cannot
5 meet its statutory or administrative obligations through a
6 change in its internal procedures.

7 B. The secretary of state's determination to grant
8 or deny a request for exemption will be based on, but not
9 limited to, an evaluation of the information provided pursuant
10 to this section.

11 C. If the secretary of state determines an agency
12 has a bona fide statutory or administrative requirement for the
13 use of the actual residential, work or mailing address of a
14 participant and that the address will be used only for those
15 statutory and administrative purposes, the secretary of state
16 may issue a written exemption for the agency use of the
17 participant's substitute address. The written exemption may
18 include:

19 (1) the agency's obligation to maintain the
20 confidentiality of a program participant's actual residential,
21 work or mailing address;

22 (2) limitations on the use and access to the
23 actual residential, work or mailing address of a participant;

24 (3) term during which the exemption is
25 authorized for the agency;

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1 (4) designation of the format in which the
2 actual residential, work or mailing address of a participant
3 shall be maintained;

4 (5) designation of an address information
5 disposition date after which the agency may no longer maintain
6 a record of the actual residential, work or mailing address of
7 a participant; and

8 (6) any provisions and qualifications
9 determined appropriate by the secretary of state.

10 D. The secretary of state's denial of an agency
11 exemption request shall be made in writing and include a
12 statement of the specific reasons for the denial.

13 E. The secretary of state shall keep a record of
14 all exemptions and all documentation relating to requests for
15 exemption.

16 Section 8. [NEW MATERIAL] CONFIDENTIALITY--DISCLOSURE OF
17 RECORDS.--

18 A. The secretary of state shall not make any
19 records in the files of a participant available for inspection
20 or copying unless directed by a court order to a person
21 identified in the order. The participant information disclosed
22 to a person identified in a court order shall be maintained in
23 strict confidentiality by the party receiving the information.

24 B. The secretary of state may confirm or verify the
25 participation of a participant in the confidential address

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1 program.

2 C. The secretary of state shall provide immediate
3 notification to a participant of a disclosure of the
4 participant's residential, work or mailing address if that
5 notification is not otherwise prohibited by law.

6 D. No notice or opportunity shall be given to a
7 participant in the confidential address program when the
8 request for disclosure is made by a law enforcement agency
9 conducting a criminal investigation where such notice would
10 jeopardize the safety of law enforcement personnel.

11 E. An agency employee shall not question the
12 participant regarding the details or circumstances of the
13 participant's participation in the confidential address
14 program.

15 F. No person shall be compelled to disclose the
16 residential, work or mailing address of a participant during
17 the discovery phase of a judicial proceeding, or during a
18 proceeding before a court of competent jurisdiction or
19 administrative tribunal, unless the court or administrative
20 tribunal finds, based upon the preponderance of the evidence,
21 that the disclosure is required in the interest of justice. A
22 court of administrative tribunal may seal the portion of any
23 record that contains a program participant's actual address.

24 Section 9. Section 1-4-5.1 NMSA 1978 (being Laws 1993,
25 Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7,
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1 as amended) is amended to read:

2 "1-4-5.1. METHOD OF REGISTRATION--FORM.--

3 A. A qualified elector may apply for registration
4 by mail, in the office of the secretary of state or county
5 clerk or with a registration agent or officer.

6 B. A person may request certificate of registration
7 forms from the secretary of state or any county clerk in
8 person, by telephone or by mail for that person or for other
9 persons.

10 C. Except as provided in Subsection D of this
11 section, a qualified elector who wishes to register to vote
12 shall fill out completely and sign the certificate of
13 registration. The qualified elector may seek the assistance of
14 any person in completing the certificate of registration.

15 D. A qualified elector who ~~[has filed for an order~~
16 ~~of protection pursuant to the provisions of the Family Violence~~
17 ~~Protection Act and who presents a copy of that order from a~~
18 ~~state or tribal court to the registration officer]~~ is a
19 participant in the confidential address program pursuant to the
20 Confidential Address Program Act may register in the manner
21 provided in Subsection B of Section 6 of that act and shall not
22 be required to provide physical residence address information
23 on the certificate of registration.

24 E. Completed certificates of registration may be
25 mailed or presented in person by the registrant or any other

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1 person to the secretary of state or presented in person by the
2 registrant or any other person to the county clerk of the
3 county in which the registrant resides.

4 F. If the registrant wishes to vote in the next
5 election, the completed and signed certificate of registration
6 shall be delivered or mailed and postmarked at least twenty-
7 eight days before the election.

8 G. Upon receipt of a certificate of registration,
9 the secretary of state shall send the certificate to the county
10 clerk in the county where the qualified elector resides.

11 H. Only when the certificate of registration is
12 properly filled out, signed by the qualified elector and
13 accepted for filing by the county clerk as evidenced by the
14 county clerk's signature or stamp and the date of acceptance
15 thereon and when notice has been received by the registrant
16 shall it constitute an official public record of the
17 registration of the qualified elector.

18 I. The secretary of state shall prescribe the form
19 of the certificate of registration, which form shall be a
20 postpaid mail-in format and shall be printed in Spanish and
21 English. The certificate of registration form shall be clear
22 and understandable to the average person and shall include
23 brief but sufficient instructions to enable the qualified
24 elector to complete the form without assistance. The form
25 shall also include:

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1 (1) the question "Are you a citizen of the
2 United States of America?" and boxes for the applicant to check
3 to indicate whether the applicant is or is not a citizen;

4 (2) the question "Will you be at least
5 eighteen years of age on or before election day?" and boxes for
6 the applicant to check to indicate whether the applicant will
7 be eighteen years of age or older on election day;

8 (3) the statement "If you checked 'no' in
9 response to either of these questions, do not complete this
10 form.";

11 (4) a statement informing the applicant that:

12 (a) if the form is submitted by mail by
13 the applicant and the applicant is registering for the first
14 time in New Mexico, the applicant must submit with the form a
15 copy of: 1) a current and valid photo identification; or 2) a
16 current utility bill, bank statement, government check,
17 paycheck, student identification card or other government
18 document, including identification issued by an Indian nation,
19 tribe or pueblo, that shows the name and current address of the
20 applicant; and

21 (b) if the applicant does not submit the
22 required identification, the applicant will be required to do
23 so when voting in person or absentee; and

24 (5) a statement requiring the applicant to
25 swear or affirm that the information supplied by the applicant

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is true."

Section 10. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.